

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>Applicant:</b>	Kent F. Hayes, Jr.	<b>Conf. No.:</b>	2602
<b>Serial No.:</b>	10/805,963	<b>Art Unit:</b>	2192
<b>Filing Date:</b>	03/22/2004	<b>Examiner:</b>	Wang, Ben C.
<b>Title:</b>	COMPUTER-IMPLEMENTED METHOD SYSTEM AND PROGRAM PRODUCT FOR RESOLVING PREREQUISITES FOR NATIVE APPLICATIONS UTILIZING AN OPEN SERVICE GATEWAY INITIATIVE (OSGi) FRAMEWORK	<b>Docket No.:</b>	RSW920030236US1 (IBMR-0062)

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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish a prima facie case of obviousness based on an error in facts. Claims 1-40 are pending in this application.

Turning to the rejection, in the Final Office Action, claims 1-7, 9, 11-17, 19-26, 28-29 and 31-39 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Klicnik *et al.* (U.S. Patent Pub. No. 2002/0184226 A1), hereafter “Klicnik,” in view of Liang *et al.* (*Bundle Dependency in Open Services Gateway Initiative Framework Initialization*, 2002, IEEE), hereafter “Liang,” and further in view of Clohessy *et al.* (U.S. Patent Pub. No. 2002/0023661 A1), hereafter “Clohessy.” Claims 8 and 18 are rejected under 35 U.S.C. §103(a) as allegedly

being unpatentable over Klicnik in view of Liang and Clohessy, and further in view of Yook *et al.* (U.S. Patent Pub. No. 2004/0139177 A1), hereafter “Yook.” Claims 10, 27, 30 and 40 are are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Klicnik in view of Liang and Clohessy, and further in view of Hall *et al.* (Component Deployment on OSGi: The Gravity Case, January 29, 2003, Fractal Workshop – LSR-Adele), hereafter “Hall.”

Applicants submit that this rejection is clearly not proper and without basis because at least one claim limitation is not met by the combined features of the references cited by the Office. As argued in the June 16, 2008 Amendment, the cited references fail to teach or suggest each and every element of independent claim 1. In particular, the references cited by the Office fail to teach or suggest obtaining the at least one prerequisite if the client device does not have the at least one prerequisite and loading the at least one prerequisite and the native application on the client device. June 16, 2008 Amendment, page 13, final paragraph. The Office attempts to equate the at least one prerequisite of the claimed invention with the “...one or more new application components required to upgrade/update an application component already stored in the portable device,” of Clohessy. Office Action, page 31. However, application components of Clohessy are specifically referred to as upgrades/updates to application components already stored on the portable device. To this extent, these application components are not prerequisites to applications that have not been installed, but rather are application components that are already stored in the portable device. In addition, Clohessy never states that these upgrades are true prerequisites, i.e., required for another application to function. As such, the application components of Clohessy cannot be equated with the at least one prerequisite of the claimed invention.

Further, Clohessy does not teach or suggest making a determination as to whether the client device has a prerequisite required for the native application to be downloaded and downloading both the native application and the prerequisite if not. Rather, Clohessy fails to disclose such a determination being made for the upgrade/update application component that the Office equates with the prerequisite of the claimed invention. Rather, the evaluation discussed in the passage of Clohessy cited by the Office involves, at best, such system attributes as megabytes of RAM, threads, and sockets availability in the portable device. To this extent, Clohessy is concerned with determining computational resources and then loading an application if resources on the portable device are sufficient to handle the application, and not with determining prerequisites for, i.e., applications necessary for operation of a natural application. In contrast, the claimed invention is polling to determine the presence of a prerequisite, obtaining the prerequisite if it's missing and loading the prerequisite and the native application. Neither Klicnik nor Liang cures these deficiencies.

As further argued in the June 16, 2008 Amendment, the cited references also fail to teach or suggest the loading of both a native application and any prerequisite applications from server to client in an OSGi environment. See June 16, 2008 Amendment, page 14, first paragraph. In stark contrast, Clohessy discloses only loading "...one or more new application components required to upgrade/update an application component already stored in the portable device." As stated elsewhere herein, Clohessy does not disclose or suggest that any of these application components is a prerequisite for any other application component. To this extent, Clohessy discloses, at best, loading an application component independently and not in conjunction with a prerequisite on which it may depend.

As still further argued in the June 16, 2008 Amendment, the cited references also fail to teach or suggest that the method for resolving prerequisites is performed recursively for the at least one prerequisite to resolve prerequisites for the at least one prerequisite. June 16, 2008 Amendment, page 14, final paragraph through page 15, continuation paragraph. In contrast, the Office argues that Yook teaches continuously updating the application. However, this continuous updating of Yook is not taught or suggested as including recursion. Furthermore, even assuming, *inter alia*, that recursion were to be a part of the Yook continuous updating, Yook does not teach or suggest that the recursion occurs in the manner claimed in the claimed invention, e.g., requesting application A1, finding that prerequisites for A1 are P1 and P2, checking the device for existence of P1 and P2, finding that P1 is not currently on the device, and beginning the process again by finding prerequisites for P2, checking the device, etc. Accordingly, Applicants respectfully submit that Yook fails to teach the recursive resolution of prerequisites of the claimed invention.

Accordingly, the Office has failed to state a prima facie case of obviousness and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

With respect to the rejections of independent claims 11, 19 and 31, Applicants note that each claim includes a feature similar in scope to the features discussed herein with respect to claim 1. Further, the Office relies on the same arguments and interpretations of the cited references as discussed above with respect to claim 1. To this extent, Applicants herein incorporate the arguments presented above with respect to claim 1, and respectfully request withdrawal of the rejections of these claims for the above-stated reasons.

The dependent claims are believed to be allowable based on the above arguments regarding the claims from which they depend, as well as for their own additional features.

Applicants respectfully submit that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

/Hunter E. Webb/

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